IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.896 OF 2002

M/s. Kiron Textile Industries,
37, Yusuf Building, 4th floor,
Mahatma Gandhi Marg,
Mumbai-400 001. .... Petitioner

- Versus -

1. Vinod Shantilal Shah,
B/2-3, Ratnadeep, Ground
Floor, Mahant Road Extn.,
Vile Parle (East),
Mumbai-400 057.

2. The Presiding Officer,
3rd Labour Court,
Bandra, Mumbai. .... Respondents

Sarvasri S.P. Dhulapkar with Sujeet Salkar
for the Petitioner.

Shri N.M. Ganguli for the Respondent (No.1).

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: AUGUST 13, 2004

ORAL JUDGMENT:

1. Heard. Perused the records. The contention of the petitioner is that inspite of payment having been made in terms of the order passed by the Labour Court in relation to the amount claimed in the proceedings under Section 33C(2) of the Industrial Disputes Act, 1947, hereinafter referred to as "the said Act", the respondent (No.1) herein chose to proceed to seek execution of the said order and in that regard a notice

for recovery of the amount came to be issued against the petitioner. Though the petition includes the challenge to the main order passed by the Labour Court allowing the application under Section 33C(2) along with the said order in relation to recovery proceedings, considering the facts and circumstances of the case, and the contentions raised across the bar, suffice to deal with the issue relating to the recovery proceedings sought to be continued by the respondent inspite of receipt of the amount in terms of the order passed in the proceedings under Section 33C(2) of the said Act.

2. The petition apparently discloses that the petitioner while accepting the order passed by the Labour Court as regards the direction to pay the amount to the respondent No.1 in the proceedings under Section 33C(2) of the said Act in view of the Award dated 11-3-1983 modified by this Court in Writ Petition No.3972 of 1983 by order dated 16-4-1992 in relation to the dearness allowance has sought to challenge the said order of the Labour Court solely on account of the fact that the respondent chose to proceed with the recovery proceedings inspite of having received the amount payable to him in terms of the said order. It is merely as a counter to the unfair act on the part of the respondent. This is apparent from the uncontroverted and unchallenged facts narrated in para 16 of the

petition which reads thus:-

> "The Petitioner states that pursuant to the Order dated 21.7.2001, the Petitioner Company, considering the quantum of amount involved in the matter, instead of challenging the said Order in the Hon'ble High Court, decided to pay to the Respondent No.1 an amount of Rs.22,119.15 towards full and final settlement of the amount payable under the said Award dated 11.3.1983. The Petitioner states that the said amount was accordingly paid to the Respondent No.1, vide Cheque dated 31.10.2001, purely on humanitarian ground and without prejudice to the Company's contention that the Respondent No.1 is not at all entitled for any amount and that the Award passed by the Labour Court was bad in law. The Petitioner states that the Respondent No.1 has accepted the said amount, however, thereafter he has proceeded further to initiate recovery proceedings against the Company through the office of the Labour Commissioner."

3. The pleadings apparently disclose that the petitioner, in the facts and circumstances of the case and considering the quantum of the amount being restricted to a sum of Rs.22,119.15 towards full and final settlement, had paid the said amount by accepting the order passed by the Labour Court. Once the petitioner had accepted the order and paid the said amount without any reservation and with the intention not to challenge the said order and merely because the respondent No.1 has chosen to proceed further to initiate recovery proceedings, in my considered opinion it is not necessary to deal with the said challenge. However, the learned Advocate for the petitioner is justified in contending that the respondent No.1 had been unfair to the petitioner, in the sense that inspite of having received the amount in terms of the order passed by the Labour Court in full and final settlement had proceeded to initiate the recovery proceedings. Certainly the petitioner is entitled to get the said proceedings quashed in view of the fact that the respondent has not disputed the fact that he has received the said amount of Rs.22,119.15 in full and final settlement towards the amount payable to him in terms of the said Award dated 11-3-1983 modified by the order of this Court.

4. In the circumstances, the petition partly succeeds. The proceedings sought to be initiated by the respondent for recovery of the amount due and payable under the order dated 21-7-2001 of the Labour Court in the application filed by the respondent under Section 33C(2) of the said Act are hereby quashed and set aside. The rule is made absolute in above terms with no order as to costs. In view of the above, the bank guarantee furnished by the petitioner stands discharged.